

BOARD OF SUPERVISORS

OFFICIAL.

TUESDAY, JANUARY 19, 1892.

The Board of Supervisors met pursuant to adjournment and was called to order by the chairman. Roll called. Quorum present. The minutes of yesterday's proceedings were read and approved.

The chairman appointed as a committee to draft resolutions on the death of ex-Supervisor Harry H. Ives Messrs. Frost, Loomis and J. W. Walker.

The committee on poor house building made the following report, and on motion of Mr. Roberts the same was accepted and the subject matter referred to said committee with power to act, a majority of the members-elect voting therefor:

To the Honorable Board of Supervisors of Kent County:

Gentlemen: Your committee on poor house building would respectfully report to your honorable body that the construction of a well in the boiler room of the new county poor house, to supply the building with water per day, is necessary and should be constructed at once, as it must be finished before the building is commenced. It is also necessary that a main sewer be constructed running back from the building about 250 feet with proper fall to carry off the sewerage from the branch sewers running into the building. Your committee would recommend that your honorable body instruct such committee as you deem best to see that the said work is pushed forward at once, and pay for the same out of the general fund of the county.

Respectfully submitted,
N. D. EMMONS,
CHAS. E. HOGADONE,
JOHN KINNEY,
Committee on Poor House Building.

The superintendents of the poor presented a claim of Ernest D. Diabrow, county physician, for extra services rendered, amounting to \$110, and asked the Board to take action thereon, and on motion of Mr. J. W. Walker the same was referred to the Committee on Claims and the superintendents of the poor.

On motion of Mr. Sullivan the special committee appointed to obtain legal advice relative to the matter of vault fixtures proceedings, were given until seven o'clock this morning to report.

The Committee on Court House Building made the following report, and on motion of Mr. Roberts the same was adopted and the recommendation therein contained concurred in, a majority of the members elect voting therefor:

To the Honorable Board of Supervisors of Kent County, Mich:

Gentlemen—Your Committee on Court House Building respectfully recommends that a payment of five hundred dollars be made to S. J. Osgood, Esq., on account of his contract, as architect for the court house building. This will make six thousand dollars paid him up to date.

Respectfully submitted,
R. B. LOOMIS,
J. W. WALKER,
JAMES HILL,
J. T. GOULD,
W. T. FROST,
Committee on Court House Building.

On motion of Mr. Ulrich the board took a recess until 11 o'clock in the forenoon.

AFTER RECESS.

The board being again called to order at 11 o'clock a. m. by the chairman, the following report was read:

To the Honorable Board of Supervisors of Kent County, Michigan.

GENTLEMEN—Your committee to whom was referred the subject matters of the vault fixtures controversy, said committee being authorized by the body to procure legal advice, would report as follows:

Through the courtesy of our clerk we were provided with copies of the entire proceedings of this board touching upon the matter in question. Some files which your committee would like to have seen were not to be found, but we believe we have thoroughly gone over the work detailed to us.

After due consideration your committee decided to submit the matter to the prosecuting attorney of this county and also to the Hon. Edwin S. Uhl for their respective opinions. The copies of the records of this board and of the questions asked of each attorney were exactly alike, and are the same as are attached to and made a part of this report. It will be seen that Mr. McGarry of the prosecuting attorney's office still retains the opinion that Kent county is legally bound to enter into and complete a contract with the Fenton Metallic company for its goods. Messrs. Uhl & Crane, on the other hand, claim that the county has not entered nor is it obliged to enter into such contract by any act of this board which has been recorded.

Therefore we, as a majority of this committee, would report that we concur with Messrs. Uhl & Crane in their opinion, and would respectfully recommend the adoption of the resolution offered by Supervisor Loomis on January 15, which resolution was referred to this committee for its consideration.

F. R. SKINNER,
JOHN BENJAMIN,
Of the committee.

Supervisor Benjamin asked the following question:

1. Has the board of supervisors awarded the contract to the Fenton Metallic company by adopting the majority report of the committee by a vote of 23 yeas, 19 nays, 3 abstentions,

and 1 not voting? (Members in majority.)

2. Has the board of supervisors awarded the contract to the Fenton Metallic company by adopting the Loomis resolution without a yeas and nays vote?

3. Does it require a two-thirds vote of members-elect to enter into any contract wherein an expenditure of money is necessary? If yes is the answer on the first and second questions, and no on the third question, then

1. Could the board of supervisors be held liable for damages to the Fenton Metallic company if the resolution offered January 15, 1892, by Mr. Loomis was adopted.

2. If the contract has not as yet been signed by the chairman and clerk of the board.

Supervisor Skeels asked the following question:

1. Is Kent county legally obliged to enter into a contract with the Fenton Metallic company for the furnishing of the vault fixtures for the new court house?

Supervisor Gould asked the following questions:

1. Should the Board rescind its action on vague rumors of fraud, and it should turn out that these rumors were untrue, would not the effect be to make the county liable for all the damages they would sustain, including the profit which they would have made on the contract if they had been allowed to perform it?

2. The contract with the Fenton company is for furnishing vault fixtures which are movable and personal in their nature. They can be moved from one office or vault the same as chairs or desks. The above being true, is it necessary to have a two-thirds vote of the members elect of the Board to purchase said office furniture? (See, 484, Howell's Statutes.)

3. Assuming that the county think they can prove the disputed fraud, would it not be in a better position if they should let the Fenton company perform their contract and then refuse to pay until there should be an adjustment, amicably or by litigation, of the damages occasioned by the disputed fraud?

4. Supposing the Board of Supervisors should rescind its previous action without the consent of the Fenton company, and re-let the contract to outside bidders, would not the county be in a position where it would have two outstanding contracts for the same thing, and liable to pay both contractors the full amount of damages?

To the Honorable Board of Supervisors of Kent County:

1. The advertisement for bids for vault fixtures, the proposal of the Fenton Metallic Co. to furnish the same, and the proceedings of your committees and body relative thereto, constitutes a contract to furnish and place in use the proposed work, and is valid and binding on both parties, unless, as has been previously explained, the Board of Supervisors have been defrauded or misled in a material matter by the Fenton Metallic company.

The proposal by the county to receive bids was intended to affect legal relations. It was the offer of a contract. Its terms were sufficient to enable a court to say what the agreement was. Its acceptance by the Fenton Metallic company was sufficiently certain and the subsequent action of the Board of Supervisors was simply a reaffirmance of its original proposal, and constituted, in my opinion, a valid agreement, subject to be rescinded only upon the ground of fraud or mistake. The Chairman and Clerk of the Board have no discretion in the matter but to carry out the will of the Board in drafting the agreement purposely entered into upon the terms proposed and accepted.

2. The contract was not awarded to the Fenton Metallic Co. by the passing of any isolated resolution. All the proceedings of the Board and its committees relative thereto, and the action of the Fenton Metallic company, when taken together, constitute the contract. This contract that is now entered into by the county and the Fenton Metallic company is an agreement to enter into a contract, the details of which have been agreed upon, and the conditions of which have been already determined by the Board.

3. Whether such a contract might be entered into in the first instance without a vote of two-thirds of all the members elected, is not now open to question.

1. Because the awarding of this contract is but a step in a proceeding designed to complete a contract previously and legally entered into, but the fulfillment of which on the part of the Western Construction company was deemed by the board impossible or inexpedient. It is incidental only to the main object already formally acted upon by the board, and requires no greater majority than the purchase of supplies for the use of the clerk, sheriff, or court, or even for the Board of Supervisors itself.

2. Because the action of the board, when taken as a whole, resulting in the carrying of Mr. Loomis' motion, viz: That the chairman and clerk of the board are authorized to execute a contract with the Fenton Metallic Co., etc., by, from which it appears, two-thirds of all the members elected, as no roll call was necessary and none demanded, being the last formal act of the board, and the one directing the execution of the contract, must satisfy the most critical examination on this branch of the inquiry. Hence I conclude:

1. That two-thirds vote was not necessary under the peculiar circumstances of the case; and

2. That if two-thirds vote was necessary, there is nothing in the record to show that the final act of the board in directing the contract to be executed

upon the terms proposed was carried by that number, and there is no way known to the law by which the record can be impeached by showing that it was carried by an insufficient number.

In answer to questions asked by Supervisor Benjamin:

1. No. All the actions of the Board of Supervisors and its committees concerning this contract must be read and construed together. When so read and construed they constitute, with the proposal of the Fenton Metallic company, a valid contract, unless the board has been misled or defrauded by the last-named company.

2. Yes. When taken in connection with all the other proceedings of the board and its committees.

3. No. And if it did the proceedings by which the Loomis resolution was adopted would be sufficient.

4. The county, not the Board of Supervisors, would be liable for damages to the Fenton Metallic company, if the resolution offered January 15th, 1892, by Mr. Loomis was adopted, provided the Fenton Metallic company were guilty of no fraud or over-reaching in the obtaining of the contract, but the measure of damages would only be to the extent of the injuries it had received from the date of acceptance to the date of rescission.

As to the question asked by Supervisor Skeels:

It is, unless the Fenton Metallic company has been guilty of fraud or false dealings, as previously explained.

As to the questions asked by Supervisor Gould:

1. The action of the Board of Supervisors must be in good faith, not based upon vague rumors, but upon the facts. They have a right to rescind the contract if the facts justify the belief that it was superinduced by fraud or mistake and was not liable for so doing. But if, on the pretext merely that there has been fraud or mistake, they now rescind their action, they are liable for damages; but those damages cannot include speculative profit. The Continued on Fourth Page.

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